

REMARKS

The rejection has been considered at length. However, for the reasons set forth below, it is believed that the claimed subject matter would not have been rendered obvious by the cited references.

Claims 16-41 are pending and claims 16-38 have been examined on the merits. Claims 16, 18, 19-24, 28-30 and 33-34 have been amended hereinabove and claim 42 has been added. Support for amended claim 16 can be found in the specification at page 4, lines 10-17 and page 11, lines 1-3. Support for amended claim 19 can be found in the specification at page 5, lines 25-29. Support for new claim 42 can be found in original claim 18 and in the specification at page 5, line 24. No new matter has been added.

In the Office Action, the specification has been objected to for not containing an abstract. Accordingly, Applicant has added an abstract as required by 37 C.F.R. § 1.72(b) rendering the objection to the specification moot.

In the Office Action, the claims have been rejected as follows:

- A) Claims 18, 19, 22, 24, 26, 27 and 30 have been rejected under 35 U.S.C. § 112, ¶ 2, for allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.
- B) Claims 16, 20, 21, 23 and 38 have been rejected under 35 U.S.C. § 103(a) for allegedly being obvious over EP 1,074,243 to Pantini (hereinafter "Pantini") in view of U.S. Patent No. 6,066,311 to Cheetam et al. (hereinafter "Cheetam");
- C) Claims 17, 18, 19, 22 and 24 have been rejected under 35 U.S.C. § 103(a) for allegedly being obvious over Pantini and Cheetam as applied to claims 16, 20, 21, 23 and 38 above, and further in view of Schliemann-Willers as published in *Acta*

Dermato-Venereologica in 2001 (hereinafter “Schliemann”) and as evidenced by the Fomblin HC/P2-1000 product information sheet as dated 09/2005 by Solvay Solexis (hereinafter “Fomblin”);

- D) Claims 25-30 have been rejected under 35 U.S.C. § 103(a) for allegedly being obvious over Pantini, Cheetam, Schliemann and as evidenced by Fomblin, as applied to claims 16-24 and 38 above and further in view of U.S. Patent No. 5,945,090 to Randall et al. (hereinafter “Randall”);
- E) Claims 35 and 36 have been rejected under 35 U.S.C. § 103(a) for allegedly being obvious over Pantini, Cheetam, Schliemann and Randall as evidenced by Fomblin and further in view of U.S. Patent No. 6,015,548 to Siddiqui et al. (hereinafter “Siddiqui”); and
- F) Claims 31-34 and 37 have been rejected under 35 U.S.C. § 103(a) for allegedly being obvious over Pantini, Cheetam, Schliemann, Randall and Siddiqui as evidenced by Fomblin and further in view of U.S. Patent No. 6,007,796 to Menzell et al. (hereinafter “Menzell”).

Applicant respectfully traverses the rejections.

As an initial matter claims 18 and 19 have been amended hereinabove. Specifically, the narrower range limitation has been deleted from claim 18 and claim 19 has been amended to provide a proper antecedent basis. Thus, the rejection over 35 U.S.C. § 112, ¶ 2, is now moot. Claims 16, 18, 19-24, 28-30 and 33-34 have also been amended to provide a better English translation of the claimed subject matter.

The presently claimed invention is directed to a composition comprising polyphenols and an amount of a stabilizing perfluoropolyether to prevent the oxidative degradation of the

polyphenols.

Pantini does not disclose a composition having polyphenols and an amount of a stabilizing perfluoropolyether.

Pantini only provides for monobasic concentrated composition containing (per)fluoropolyethers (*e.g.*, page 2, paragraph [0001]). As defined on page 4, paragraph [0025], the composition described in Pantini is first obtained as a concentrated composition, and then it is diluted with the necessary solvents and excipients to obtain the desired final percentage of (per)fluoropolyether phosphate. Accordingly, the concentrated composition can be added to emulsions oil/water or water/oil to obtain stable emulsions (*e.g.*, page 5, paragraph [0031]). As such the stability mentioned in Pantini regards the stability of the emulsion (“said emulsions are considered stable since no separation of phases occurs”) (*e.g.*, page 5, paragraph [0031]), not the stability of polyphenols against oxidation.

In fact, Pantini is completely silent with regards to polyphenols.

As Pantini, Cheetam also fails disclose the claimed subject matter. Namely, Cheetam discloses the use of caffeic acid and derivatives as sunscreen additives (*e.g.*, col. 1, lines 3-5). However, the disclosures of either Pantini or Cheetam do not provide any motivation to combine the caffeic acid of Cheetam with the (per)fluoropolyethers of Pantini. That is, there are no teachings or hints that the composition disclosed in Pantini could protect a polyphenol like caffeic acid against oxidative degradation.

As set forth above, Pantini discloses “stability” in the context of “emulsion stability” wherein the two phases do not separate. Nowhere Pantini discuss the need to prevent oxidative degradation nor does Cheetam contain any teaching or hints concerning polyphenols degradation.

As such, it is respectfully submitted that the Examiner’s basis of this rejection is based on

an erroneous assumption. That is, it is based on the assumption that the oxidative stability claimed herein is the same stability disclosed in Pantini (*e.g.*, a stability of an emulsion whose phases do not separate), when the two terms refer instead to two completely different concepts.

Accordingly, a person skilled in the art would have found no motivation to introduce the caffeic acid disclosed in Cheetam in the emulsion made from the concentrated composition disclosed in Pantini.

As such, it is submitted that the presently claimed invention is non-obvious over the combination of Pantini and Cheetam and withdrawal of the rejection of claims 16, 20, 21, 23 and 38 under 35 U.S.C. § 103(a) is respectfully requested.

As the combination of Pantini with Cheetam would not have rendered obvious the subject matter of independent claim 16, neither does it the addition of Schliemann-Willers, the Fomblin HC/P2-1000 product information, Randall, Siddiqui and Mendell. As such, the combination of the cited references would not have rendered obvious the subject matter of the independent claim 16 and of all of the claims depending upon it.

Thus, Applicant respectfully submits that the pending claims are in condition for allowance and a Notice to that effect is respectfully requested.

This response is being filed within the shortened period for response. Thus, no extra fees are believed to be due. If, on the other hand, it is determined that further fees are necessary or any overpayment has been made, the Commissioner is hereby authorized to debit or credit such sum to Deposit Account No. 02-2275.

Pursuant to 37 C.F.R. § 1.136(a), please treat this and any concurrent or future reply in this application that requires a petition for an extension of time of its timely submission as incorporating a petition for extension of time for the appropriate length of time. The fee associated

herewith is to be charged to the above-mentioned deposit account.

An early and favorable action on the merits is earnestly solicited.

Respectfully submitted

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LUCAS & MERCANTI, LLP

By: /Silvia Salvadori/
Reg. No. 48,265
475 Park Avenue South
New York, NY 10016
Phone: (212) 661-8000
Fax: (212) 661-8002